

Cause No. D-1-GV-07-001386

STATE OF TEXAS,
Plaintiff,

v.

MANNATECH INCORPORATED;
MANNA RELIEF MINISTRIES;
THE FISHER INSTITUTE;
SAMUEL L. CASTER, Individually; and
REGINALD McDANIEL, Individually,
Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

353RD JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

FEB 26 2009 TH

At 8:51 A.M.
Amalia Rodriguez-Mendoza, Clerk

**FINAL JUDGMENT AND AGREED PERMANENT INJUNCTION
AGAINST SAMUEL L. CASTER**

Plaintiff, the STATE OF TEXAS, acting by and through Attorney General Greg Abbott ("ATTORNEY GENERAL"), and Defendant Samuel L. Caster ("DEFENDANT" or "Caster") have consented to the entry of this Final Judgment and Agreed Permanent Injunction, and before any testimony is taken and without admitting to any violations of the Texas Food, Drug and Cosmetic Act, TEX. HEALTH & SAFETY CODE ANN. '431.001 *et seq.* ("TFDCA"), and the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. '17.21 *et seq.* ("DTPA") or any other law, have jointly moved that the Court enter this Judgment.

The Court, after reading the pleadings of the parties and it appearing to the Court that both parties agree to and have approved its entry of this Judgment, makes the following orders under the provisions of the TFDCA and the DTPA. The Court is of the opinion that said agreement should be and is hereby in all things approved, and accordingly that this Final Judgment and Agreed Permanent Injunction should be entered.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has jurisdiction over the claims asserted against Defendant Caster and over Caster and the State of Texas.

2. Plaintiff's Original Petition states a claim for relief against Defendant Caster.

3. Venue of this matter is proper in Travis County by virtue of the fact that the State of Texas seeks an injunction to prevent violations of the TFDCA and Caster has consented to venue in this instance.

4. By entering into this Judgment, Defendant admits no wrongdoing and this Judgment does not constitute any evidence or admission of any kind regarding any issues set forth herein, nor does it acknowledge that Defendant has engaged in any unlawful activity, nor shall it be construed as evidence that Defendant has engaged in any methods, acts, practices, uses or solicitations declared to be unlawful under the TFDCA and the DTPA. Defendant does not admit the truth of any alleged facts, any of the characterizations of Defendant's alleged conduct, or any of the conclusions set forth in Plaintiff's Original Petition or any amended pleadings pertaining to this matter.

5. Entry of this Final Judgment and Agreed Permanent Injunction is not a finding of liability on the part of Caster.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

DEFINITIONS

6. The following definitions shall be used in construing this Judgment:

A. "Advertisement" or "Advertising" means all representations disseminated in any manner or by any means for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of any good, service, article, or food, including a dietary supplement.

- B. "Assisting" means providing assistance or support to any person or entity, including, but not limited to: (a) formulating, drafting, providing, or arranging for the formulation, drafting, or provision of any marketing material, including employee scripts; (b) providing names of, or assisting in the generation of, potential customers; (c) performing marketing services of any kind; (d) performing customer service functions, including but not limited to, receiving or responding to consumer complaints; (e) providing any training or training materials; and (f) providing information, advice, consultation, or materials regarding business operations, processes, or practices.
- C. "Clear and Conspicuous" or "clearly and conspicuously" means that the required disclosure is in such size, color, contrast, location, duration, and audibility that it is readily noticeable, readable, and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in close proximity to the information it modifies, in a manner that is readily noticeable, readable, and understandable, and it must not be obscured in any manner.
- D. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based upon the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the industry to yield accurate and reliable results.
- E. "Dietary supplement" is a food and is regulated by '431.001 *et seq.* of the TFDCA.

- F. "Drug" has the meaning by which it is defined in ' 431.002 (14) of the TFDCA.
- G. "Drug Monograph" means a tentative final or final federal regulation establishing conditions under which a category of over the counter ("OTC") drugs or specific OTC drugs are generally recognized as safe and effective and not misbranded.
- H. "Falsely advertising" means advertising that is false, deceptive, or misleading in any particular, or has the tendency or capacity to deceive or mislead.
- I. "FDA" means the Federal Food and Drug Administration.
- J. "Federal Act" means the Federal Food, Drug and Cosmetic Act.
- K. "Final Judgment" or "Judgment" means the entire Final Judgment and Agreed Permanent Injunction.
- L. "Food" means an article or a component of an article used for human food or drink, and includes chewing gum as defined in ' 431.002(16) of the TFDCA and dietary supplements.
- M. "Label" means a display of written, printed, or graphic matter upon the immediate container of any article.
- N. "Labeling" means all labels and other written, printed, or graphic matter upon any article or any of its containers or wrappers or accompanying such article.
- O. "Mannatech" means Mannatech Incorporated and its successors and assigns.
- P. "Misbranded" or "misbranding" as used in relation to any food, means a food that meets any of the criteria listed in ' 431.082 of the TFDCA generally and specifically ' 431.082 (a), (f) and (j) of the TFDCA which defines misbranded food as food in which its labeling is false or misleading in any particular.

Q. "Multi-level Marketing Program" means any marketing program in which participants pay money to the program promoter in return for which the participants obtain the right to: (1) recruit additional participants, or have additional participants placed by the promoter or any other person into the program participant's downline, tree, cooperative, income center, or other similar program grouping; (2) sell goods or services; and (3) receive payment or other compensation, in whole or in part, based upon the sales of those in the participant's downline, tree, cooperative, income center or similar program grouping.

R. "New drug" has the meaning by which it is defined in '431.002 (25) of the TFDCA.

PERMANENT INJUNCTION

I.

Prohibitions Regarding Future Participation in Mannatech Incorporated

7. **IT IS FURTHER ORDERED THAT** Defendant Caster, his assigns, servants, agents, employees, and any other person or entity acting in concert or participation with or on behalf of Defendant Caster, who receives actual notice of this Judgment by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, are, for a period of five (5) years, restrained and enjoined from engaging, participating, or assisting in any manner or capacity whatsoever, except as specifically provided in Paragraph 8 below, in any Multi-level Marketing Program.

8. Notwithstanding Paragraph 7 above, Defendant Caster may continue to buy and sell shares of Mannatech stock and may act as an independent consultant to Defendant Mannatech. Provided, however, in his capacity as an independent consultant, Defendant Caster:

A. Shall not serve as an officer, director, or employee of Mannatech;

B. Shall not have authority to make any managerial decisions on behalf of Mannatech;

C. Shall not represent, directly or indirectly, that he has authority to make any managerial decisions on behalf of Mannatech;

D. Shall not receive any compensation for his consulting services that is contingent upon or based on, in whole or in part, the financial success or condition of Mannatech, including but not limited to company sales, revenue, profit, or share price; and

E. Shall be bound, when acting as an independent consultant to Mannatech, by the terms of the Agreed Final Judgment and Permanent Injunction Against Mannatech, a copy of which is attached hereto.

II.

Prohibitions Regarding Representations and False Advertising

9. **IT IS FURTHER ORDERED THAT** Defendant Caster, his assigns, servants, agents, employees, and any other person or entity acting in concert or participation with or on behalf of Defendant Caster, who receives actual notice of this Judgment by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from the following:

A. Employing any testimonial or endorsement regarding the characteristics, ingredients, uses, or benefits of any Food, Drug, or good that is not supported by or is inconsistent with competent scientific evidence and the representations in the testimonial or endorsement can legally be made for such good;

B. Representing or assisting others in representing, directly or indirectly, that any Food can cure, treat, mitigate, or prevent any disease;

- C. Giving away, offering for sale, selling, marketing, promoting, distributing, advertising or assisting others in giving away, offering for sale, selling, marketing, promoting, distributing, or advertising, the sale of any Food by representing, expressly or by implication, that such Food can cure, treat, mitigate, or prevent any disease;
- D. Giving away, offering for sale, selling, distributing, sending, mailing, printing, giving, disseminating, advertising, referencing, or assisting others in giving away, offering for sale, selling, distributing, sending, giving, mailing, printing, advertising, referencing, or disseminating, any materials that in any manner represent, expressly or by implication, that any Food can cure, treat, mitigate, or prevent any disease;
- E. Disseminating any advertisement for any Food, Drug, or good that is false or misleading in any particular;
- F. Making any health-related representations or claims, including but not limited to any representation or claim about the efficacy, safety, side effects, or the health performance or benefits of any Food unless at the time that the representation or claim is made, competent and reliable scientific evidence substantiates the representation or claim. Provided, however, nothing in this section shall be construed to allow any claim that causes a Food to be a Drug;
- G. Falsely advertising or falsely representing that a Drug or Food is effective for treating diseases of the body, when FDA has not approved a new drug application for such product(s) for such purposes, or has not authorized or permitted such representation in accordance with a Drug Monograph;

- H. Representing, expressly or by implication, that any Food, Drug, or good has any benefit which it does not have;
- I. Making or assisting others in making any representation that any Food, Drug, or good has any benefit or characteristic unless Defendant or the person making the representation has in his possession at the time such representation is made competent and reliable evidence that substantiates such representation and making the representation does not violate any other provision of this Judgment;
- J. Representing that any scientific study supports a claim that any Food can cure, treat, mitigate, or prevent any disease, unless FDA has approved a new drug application for such product or has authorized or permitted the claim in a Drug Monograph and such study actually supports Defendant's representation; or
- K. Directly or indirectly authorizing, approving, assisting, or allowing another person to engage in conduct prohibited in this section.

III.

Prohibitions Regarding Misbranded Foods and Unapproved New Drugs

10. **IT IS FURTHER ORDERED THAT** Defendant Caster, his assigns, servants, agents, employees, and any other person or entity acting in concert or participation with or on behalf of Defendant Caster, who receives actual notice of this Judgment by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from the following:

- A. Misbranding any Food, including any dietary supplement, or causing the misbranding of any Food in commerce;

- B. Introducing or delivering into commerce any misbranded Food, including any dietary supplement, or causing the introduction or delivery into commerce of any misbranded Food; and
- C. Manufacturing or distributing or causing the manufacturing or distribution of any Drug in Texas without an approved New Drug application having been submitted to and approved by FDA, or in compliance with a Drug Monograph, for each Drug manufactured, including by making claims that a Food, including a dietary supplement, can cure, treat, mitigate, or prevent any disease.

IV.

Prohibitions Regarding MannaRelief

11. **IT IS FURTHER ORDERED THAT** Defendant Caster, his assigns, servants, agents, employees, and any other person or entity acting in concert or participation with or on behalf of Defendant Caster, who receives actual notice of this Judgment by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from:

- A. Engaging, participating, or assisting in any manner or capacity in MannaRelief Ministries ("MannaRelief") to promote, represent, or advertise, directly or indirectly, that any Food can cure, treat, mitigate, or prevent any disease; and
- B. Engaging, participating, or assisting in any manner or capacity in MannaRelief Ministries if he knows, or reasonably should know, that MannaRelief is promoting, representing, or advertising, directly or indirectly, that any Food can cure, treat, mitigate, or prevent any disease.

V.

Prohibition of Use of any Device, Subterfuge, or Pretense

12. **IT IS FURTHER ORDERED THAT** Defendant Caster, his assigns, servants, agents, employees, and any other person or entity acting in concert or participation with or on behalf of Defendant Caster, who receives actual notice of this Judgment by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from attempting to evade the application of this Final Judgment by using any device, subterfuge, or pretense.

VI.

Compliance Reporting by Defendant

13. **IT IS FURTHER ORDERED THAT**, in order that compliance with the provisions of this Judgment may be monitored, Defendant Caster, for a period of ten (10) years from the Effective Date of this Judgment, shall notify the Attorney General of the following:

- A. Any changes in Defendant's residence, mailing address, and telephone numbers, within ten (10) days of the date of such change;
- B. Any changes in Defendant's employment status (including self-employment) within ten (10) days of such change. Such notice shall include the name and address of each business that the Defendant is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of the Defendant's duties and responsibilities in connection with the business; and
- C. Any changes in Defendant's name or of any aliases or fictitious names, within ten (10) days of such change.

14. Nothing in this Judgment shall limit the Attorney General's lawful use of compulsory process pursuant to the DTPA, including but not limited to Civil Investigative Demands and Sworn

Statements, to investigate whether Defendant has violated any provision of this Judgment or the DTPA. Nothing in this Judgment shall limit the enforcement of the Texas Food, Drug, and Cosmetic Act or any other law against Caster or the right for the Texas Department of State Health Services to investigate whether Defendant has violated any provision of the Texas Food, Drug, and Cosmetic Act or term of this Judgment pertaining to this Act, other than the violations of those acts that were charged in the Plaintiff's Original Petition in this proceeding.

VII. Miscellaneous

15. **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant shall not represent to the public that this Judgment constitutes approval by Plaintiff or this Court of any of Defendant's actions or business activities.

16. In the event that Defendant concludes, based on changed circumstances or otherwise, that the terms of this Judgment unfairly restrict his business practices, then Defendant may submit a written request to the State, through its Office of Attorney General, seeking to modify the terms of this Judgment including requesting that any or all of Defendant's obligations under the terms cease. The Attorney General shall make a good faith evaluation of Defendant's request and after collecting information the Attorney General deems necessary, make a prompt decision, but in no event more than ninety (90) days from Defendant's request for same (or 30 days after receiving all material information requested from Defendant, whichever is later). If the Attorney General denies Defendant's requested modification, Defendant may in accordance with the Texas Rules of Civil Procedure petition the Court for modification of the terms and conditions of this Judgment.

17. Any notice or report to the Attorney General required by this Judgment shall be addressed and sent to:

Division Chief
Consumer Protection and Public Health Division
Ref AG#052168077
300 W.15th Street, Mail Code 010
Austin, Texas 78701.

18. **IT IS FURTHER ORDERED THAT** Defendant Caster shall pay One Million and No/100 Dollars (\$1,000,000.00) to the Office of the Attorney General as civil penalties pursuant to ' 431.021 of the TFDCA and to DTPA ' 17.47(c)(1) . These civil penalties shall constitute a civil fine or penalty to and for a governmental unit and is not compensation for actual pecuniary loss.

19. The payment of civil penalties shall be made via a cashier's check made payable to the Office of the Attorney General of Texas. The check or accompanying correspondence shall bear Attorney General No. 052168077 on it and shall be mailed to the following address: Office of the Attorney General of Texas, c/o C. Brad Schuelke, Assistant Attorney General, Consumer Protection and Public Health Division, P.O. Box 12548, Austin, Texas 78711-2548. The payment is due on or before August 31, 2010.

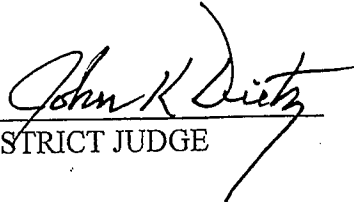
20. The clerk of the Court is authorized to issue such writs of execution or other process necessary to collect and enforce this Judgment.

21. The Court retains jurisdiction to enforce this Judgment.

22. It is agreed and understood that this Judgment shall in no way affect the rights of individual citizens.

23. All relief not granted herein is hereby denied.

Signed this 26 day of February, 2009.


DISTRICT JUDGE

THE UNDERSIGNED, WHO HAVE THE AUTHORITY TO CONSENT AND SIGN ON BEHALF OF THE PARTIES IN THIS ACTION, HEREBY CONSENT TO THE FORM AND CONTENTS OF THE FOREGOING FINAL JUDGMENT AND AGREED PERMANENT INJUNCTION AND TO ITS ENTRY:

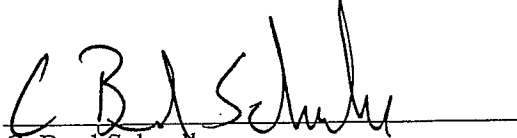
Signed this 25 day of February, 2009.

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General


JEFF L. ROSE
Deputy First Assistant Attorney General

PAUL D. CARMONA
Chief, Consumer Protection and
Public Health Division



C. Brad Schuelke
State Bar No. 24008000
Joyce W. Iliya
State Bar No. 00784319
Assistant Attorneys General
Consumer Protection Division
300 W. 15th Street, 9th Floor
Austin, Texas 78701
Tel. (512) 475-4628
Fax (512) 473-8301

ATTORNEYS FOR THE STATE OF TEXAS


Samuel L. Caster
DEFENDANT
VINSON & ELKINS LLP
Bill Jones
State Bar No. 10869990
The Terrace 7
2801 Via Fortuna, Suite 100
Austin, Texas 78746
Tel. (512) 542-8730
Fax (512) 236-3237
ATTORNEY FOR DEFENDANT
SAMUEL L. CASTER